

Consideration of proposed Standard Operating Procedure to assist with implementing the statutory directive that the Natural Resources Commission and the Department of Natural Resources seek repayment of costs expended regarding the reviews of conservancy districts; Administrative Cause No. 10-028W

During its January 12, 2010 meeting, the Natural Resources Commission approved amendments to “Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33)”. This nonrule policy document may be accessed online at www.in.gov/legislative/iac/20100127-IR-312100036NRA.xml.html.

The primary purpose of the January amendments was to provide guidance regarding a statutory directive that the Commission and the DNR seek repayment of costs incurred in providing reviews of conservancy district matters. With emphasis added, the minutes of the January 12 meeting provided in part:

Mark Ahearn moved to approve amendments to the “Procedural Guidelines for the Interpretations of the Conservancy District Article”, Information Bulletin #36 (Fifth Amendment), to provide guidance pertaining to the reimbursement of expenses as specified in IC 14-33-2-20. In addition, he directed the Commission, with assistance from the Department, to draft guidelines for the calculation of reimbursement of costs. Donald Ruch seconded the motion. Upon a voice vote, the motion carried.

During the March 16 Commission meeting, Ron McAhron reported a draft document would be tendered to the Advisory Council for recommendations concerning implementation of the guidance. Because the directive would be to employees of the Commission and the DNR, the document could be articulated as a standard operating procedure or “SOP”.

The Advisory Council reviewed the draft in its April 14 meeting. During deliberations, examples were outlined of costs for the formation of conservancy districts. The formation of conservancy districts is typically the stage when the combined participation of personnel in the Department of Natural Resources and the Natural Resources Commission is most extensive. These examples were intended to offer perspectives into the potential cost repayments if the SOP were implemented. Following discussions, the Advisory Council recommended approval of the SOP as set forth below in Exhibit A. Exhibit A is recommended for Commission approval.

Exhibit A

STANDARD OPERATING PROCEDURE FOR DETERMINING AGENCY COST REPAYMENT PERTAINING TO CONSERVANCY DISTRICTS

The purpose of this Standard Operating Procedure (the “SOP”) is to assist with implementing the directive of the Indiana General Assembly requiring repayment, under IC 14-33-2-20, of expenses incurred by the Department of Natural Resources (the “DNR”) and by the Natural Resources Commission (the “Commission”) in the review of matters pertaining to the development of conservancy districts. The SOP applies the Commission’s Information Bulletin #36 (Fifth Amendment), “Procedural Guidelines for the Interpretations of the Conservancy District Article (IC 14-33)”, posted in the *Indiana Register* on January 27, 2010 at 20100127-IR-312100036NRA. In particular, assistance is provided with IX. Expenses (B. Repayment) which applies to a conservancy district formed following a court order issued after March 31, 2010, under IC 14-33-2-17(b) or IC 14-33-2-18(b), and which provides as follows:

B. Repayment

(1) Subject to subdivision (3), a conservancy district shall, under IC 14-33-2-20, repay the commission for reasonable expenses incurred by its employees with respect to the formation, review, or dissolution of a conservancy district with respect to the following:

(A) Preparing, conducting, or reporting upon any hearing described under IC 14-33 or this information bulletin.

(B) Performing any investigations or surveys.

(C) Studying and acting upon the development of a district plan or unit of work.

(2) Subject to subdivision (3), a conservancy district shall repay the department or another state agency for performing activities described in subdivision (1) if the activities are performed in cooperation with the commission.

(3) The financial responsibility of a conservancy district under subdivisions (1) and (2) is limited to a maximum of thirty percent (30%) of the amount paid by the conservancy district to private engineers for the preparation of plans for the following:

(A) forming a district;

(B) developing a district plan; and

(C) developing a unit of work.

Subject to the 30% limitation referenced in B(3), the following principles shall be applied by the DNR and the Commission in determining the amounts of repayments:

- (1) In conducting their functions, the DNR and the Commission shall minimize duplication of efforts. The DNR and the Commission serve different functions with respect to conservancy districts, however, and an analysis or review by a Commission employee does not duplicate an analyses or review by a DNR employee.
- (2) Repayments for salaries shall be in the amounts compensated by the State of Indiana, determined on an hourly basis, and directly attributable to services by an employee of the DNR or Commission for review of a particular conservancy district. Reimbursements apply only to time coded and entered on the regular bi-weekly payroll submittal of the employee.
- (3) Repayments for mileage, any overnight expenses, and similar incidental expenses shall be in the amounts approved by the State of Indiana at the time of accrual.
- (4) If an employee of the DNR or the Commission travels in support of an activity pertaining to a conservancy district, as well as another professional responsibility with the State of Indiana, the employee shall seek to equitably allocate expenses attributable to services for the conservancy district. If the employee determines allocation is impracticable, the amount attributable to the conservancy district shall be determined as if the employee traveled directly to and from the site or sites pertaining to the conservancy district. Repayment from a conservancy district is not required for time attributable to attendance by a Commission member or Commission employee at a meeting of the full membership of the Commission.
- (5) The DNR and the Commission shall not include cost reimbursement for employee education or training that has general application to agency responsibilities for conservancy districts. This exclusion does not preclude reimbursement for research into engineering, scientific, or legal principles which have particular application to the conservancy district under review.
- (6) The DNR and the Commission shall not include cost reimbursement for time or expenses occasioned by personnel reassignments within the respective agencies.
- (7) This SOP shall be liberally construed to provide overall fairness to the conservancy district and to the citizens of Indiana.